

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DALLAS BERKSHIRE, LTD.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:21-cv-3213-C
	§	
FEDERAL INSURANCE COMPANY,	§	
	§	
Defendant.	§	

**DEFENDANT FEDERAL INSURANCE COMPANY'S
MOTION TO DISQUALIFY JACK HANKS AS PLAINTIFF'S APPRAISER
AND BRIEF IN SUPPORT**

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Defendant Federal Insurance Company (“Federal”) submits this Opposed Motion to Disqualify Jack Hanks as the designated appraiser for Plaintiff Dallas Berkshire, LTD (“Berkshire”), and would respectfully show the Court as follows:

I. SUMMARY

1. This matter involves an insurance appraisal process. The applicable insurance policy requires that both Federal and Berkshire name “competent and disinterested” appraisers. Federal named Josh Ziegler as its appraiser. Berkshire named Jack Hanks as its appraiser. But as shown below, Hanks is far from “disinterested.”

2. Hanks is clearly acting as an advocate for Berkshire and its counsel. Berkshire’s counsel stated in a recent podcast with Hanks that they do “a shit ton of appraisals” with Hanks. Hanks stated that “[w]e try, [w]e try” to “knock it out of the park,” that he will “jam an appraisal down an insurance company’s throat,” and that his “job is to get the insured paid.” Consistent with these boastful advocacy statements, Hanks recently posted a TikTok video recorded from the roof of the Berkshire property during his appraisal inspection. In this TikTok video, Hanks thanks counsel for Berkshire “for all his hard work to get this thing into appraisal” and then states he is “going to get this thing over the top for us.” For us. Those are the precise words used by Hanks.

3. As shown by his own words, Hanks is an advocate for Berkshire and its counsel. He is not a “disinterested appraiser” as required by the applicable insurance policy. To the contrary, Hanks’ primary profession is a public adjuster, which requires him to advocate for policyholders in the insurance claims process. Similar to his role as a public adjuster, Hanks openly and publicly admits that he views his role as an appraiser also as an advocate for the policyholder and, in this case, its counsel. Because no reasonable jury could find that Hanks is “disinterested,” he not a qualified appraiser and should be disqualified.

II. FACTUAL BACKGROUND

4. Federal issued to Berkshire insurance policy number 3599-06-04 WUC, with effective dates from July 23, 2019, to July 23, 2020 (the “Policy”).¹ The Policy’s appraisal clause reads as follows:²

Appraisal

*In case we and you shall fail to agree as to the amount of loss or damage, then, on the written demand of either, each shall select **a competent and disinterested appraiser** and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire. If the appraisers fail to agree upon such umpire within 15 days; then, on the request of either, such umpire shall be selected by a judge of the district court where the loss or damage occurred. The appraisers shall then appraise the loss or damage, stating separately the loss or damage to each item; and failing to agree, shall submit their differences only to the umpire. An award in writing, so itemized, of any two when filed with the Company, shall determine the amount of loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.*

If there is an appraisal:

- we still retain our right to deny the claim;*
- and*
- you retain your rights under the Legal Action Against Us provision.*

(emphasis added.)

¹ See Ex. 1, the Policy; App. p. 13.

² See Ex. 1, the Policy; App. p. 132.

5. The history of the underlying insurance claim is set forth in Federal’s Response to Berkshire’s Motion to Compel Appraisal and Abate Litigation.³ As set forth therein, on May 26, 2020, Berkshire’s counsel, J. Zachary Moseley with McClenny Moseley & Associates, PLLC (“MMA”), submitted an insurance claim to Federal on behalf of Berkshire (hereinafter referred to as the “Claim”). MMA claimed that the Property had allegedly sustained damage from a tornado that had occurred on October 20, 2019.

6. For the next year, Federal attempted to obtain information from Berkshire as to the nature of the damages comprising the Claim. Berkshire was not forthcoming. Besides a May 25, 2020 estimate submitted by MMA without any supporting documentation, Federal received no further information from either Berkshire or MMA with respect to the claim until May 31, 2022, more than two years and seven months after the claimed date of loss.

7. Prior to Berkshire submitting any documentation to Federal substantiating the damages sought in the Claim, on October 19, 2021, exactly two years after the tornado, Berkshire invoked the appraisal process, naming John Olle as its appraiser. Three days later, on October 22, 2021, Berkshire filed this lawsuit.

8. Federal objected to Berkshire’s invocation of the appraisal process. Federal argued that pursuant to the language in the Policy, appraisal is only proper when there is a dispute as to the amount of loss. Because Berkshire had never advised Federal of the damages sought in the Claim, appraisal was improper.

9. On August 18, 2022, Berkshire filed its Motion to Compel Appraisal and Abate Litigation, which this Court granted on November 14, 2022 (the “Order”). In its Order, the Court ordered that the Parties appoint their respective appraisers within 10 days.

³ See Defendant’s Response to Plaintiff’s Motion to Compel Appraisal and Abate Litigation, ECF No. 8.

10. As discussed, Berkshire had already named John Olle as its appraiser. However, on November 16, 2022, two days after entry of the Order, Berkshire sent correspondence to Federal advising that it was removing John Olle as its appraiser and replacing him with Jack Hanks. Hanks is a licensed Texas public adjuster working for Velocity Public Adjusting. Federal subsequently named Joshua Zeigler as its appraiser. Ziegler is a building consultant working for Cavalry Construction & Restoration. Hanks and Zeigler have since agreed to appoint John C. Robison as umpire for the appraisal process.

III. HANKS IS NOT A DISINTERESTED APPRAISER

11. Berkshire's appraiser Hanks has shown an inability to serve as a disinterested appraiser as required by the Policy.

12. Hanks is a licensed public adjuster in the state of Texas. As a public adjuster, Hanks is an advocate for policyholders advocating on their behalf in the claims process. Prior to 2005, acting as a public adjuster was found by Texas courts to constitute the unauthorized practice of law. *See Brown v. Unauthorized Practice of Law Committee*, 742 S.W.2d 34 (Tex. App.-Dallas, 1987, writ denied); *Greene v. Unauthorized Practice of Law Committee*, 883 S.W.2d 293 (Tex. App.-Dallas 1994, no writ). In 2005, the Texas Legislature enacted Chapter 4102 of the Texas Insurance Code. This legislation created a statutory framework allowing public adjusters a narrow lane in which they could essentially do business that would otherwise be considered the practice of law. The legislation specifically authorized public adjusters to advocate on behalf of policyholders in the insurance claims process. In doing this work, public adjusters sign contracts with their clients and typically work on a contingency fee based on the amount they increase the claim measure. Essentially, public adjusters act as a lawyer would act in representing policyholders in the insurance claims process on a contingency fee. Like a lawyer, they are advocates for their clients.

13. Licensed public adjusters are often retained by insureds to serve as appraisers in the insurance appraisal process. When doing so, however, a public adjuster does not execute a typical public adjuster contract, as that would require the public adjuster to act as an advocate for the insured. This would be improper in the appraisal context as Texas law prohibits appraisers from working on a contingency fee. *See General Star Indem. Co. v. Spring Creek Village Apartments Phase V, Inc.*, 152 S.W.3d 733, 737 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (“An appraiser who works on a contingency fee is not impartial.”). Instead, public adjusters serving as appraisers typically execute a separate appraiser agreement working on an hourly basis. Essentially, in this situation, the public adjuster takes off his “public adjuster hat” and puts on his “appraiser hat.” There is nothing wrong with this — so long as the public adjuster is capable of actually changing hats.

14. Clearly, as described below, Hanks is incapable of the requisite hat change. He views his role as an appraiser no differently than he views his role as a public adjuster. Hanks openly states that as an appraiser, like as a public adjuster, his job is to “get the insured paid.” An appraiser who believes that his job is to “get the insured paid” is not disinterested.

15. There are many factors supporting a determination that Hanks is not disinterested. First, Hanks has a long history of working closely with Berkshire’s counsel. On September 15, 2022, Hanks published an episode of his podcast titled “Because Experience Matters with Jack Hanks.”⁴ In this podcast, Hanks’ guest was attorney Zach Moseley. Moseley is with MMA, who is counsel for Berkshire in this matter.

⁴ Jack Hanks, *Handling Claims and Appraisals with Special Guest Zach Moseley*, Because Experience Matters with Jack Hanks (Sept. 15, 2022), <https://podcast.thejackhanks.com/1906539/11316492-11-handling-claims-and-appraisals-with-special-guest-zach-moseley>. *See also* Ex. 2, Moss Dec. at ¶4-5; App. p. 269-70.

16. Throughout the podcast, Hanks and Moseley discuss their long history of working together on appraisals. The following statements were made during the podcast between Hanks and Moseley:

- 2:07 Moseley: “You’ve [Hanks] knocked it out of the park for us every time we’ve got you involved.”
Hanks: “We try. We try, we try, right?”
- 28:28 Moseley: “You and I do a shit ton of appraisals together.”
- 30:25 Moseley: “We’ve had some great great awards come down where we’ve hired you, Jack.”
- 31:26 Moseley: “We’ll jam an appraisal down an insurance company’s throat.”
- 38:43 Moseley: “If they [insured] hire you, though, you know what you’re doing, and you’re not going to lose an appraisal.”
- 56:25 Hanks: “My job is to get the insured paid.”

17. Obviously, these comments demonstrate that Hanks views his role as an appraiser the same way as he views his role as a public adjuster — as an advocate for the policyholder with an objective of getting the policyholder paid.

18. Second, by his profession as a public adjuster, Hanks’ job is to advocate for policyholders in the insurance claims process. Only if he can disassociate himself with the public adjusting profession can a licensed public adjuster also serve as an appraiser. Hanks has demonstrated a clear inability to do so.

19. Hanks openly puts forth his view that he is a policyholder advocate when serving as an appraiser in various social media postings. For example, on his public Facebook page, Hanks touts “another successful large loss appraisal award” in which he helped the insured “get what they

deserve.”⁵ In another similar Facebook post, Hanks again brags about the amount of an appraisal award and how he “loved winning this for you!”⁶ Clearly, from these posts Hanks views appraisal as an adversarial process where there is a winner and a loser. And Hanks views his job as helping his clients win.

20. Finally, perhaps the most telling indication that Hanks views his role as an advocate comes from Hanks’ work on this very appraisal. On December 7, 2022, Hanks uploaded a video to the popular social media application TikTok. Hanks’ TikTok video depicts him standing on the roof of the Berkshire property that is the subject of this appraisal. Hanks states that he arrived at the property “a few hours ago,” and that he is the appointed appraiser on “a probably *pretty close to \$20 million dollar* tornado claim here in the outskirts of Dallas” and that he wants to “thank Zach Moseley with MMA for all his hard work to get this thing into appraisal.”⁷ He goes on to say that “Todd Stern wrote one hell of an engineering report, *which is going to get this thing over the top for us*” (emphasis added).⁸

21. On December 23, 2022, Hanks published another TikTok video “I wanna thank, number one, our staff, our documentation team, operation team, our estimators, all of our adjusters

⁵ Jack Hanks, FACEBOOK.COM (Dec. 18, 2022, 5:11 PM), <https://www.facebook.com/photo/?fbid=10229295587683510&set=pb.1512050043.-2207520000>. See also Ex. 2, Moss Dec. at ¶7-8; Ex. 2-A, Facebook Posts; App. pp. 270, 275.

⁶ Jack Hanks, FACEBOOK.COM (Dec. 21, 2022, 1:22 PM), <https://www.facebook.com/photo/?fbid=10229315679985805&set=pb.1512050043.-2207520000>. See also Ex. 2, Moss Dec. at ¶7-8; Ex. 2-A, Facebook Posts; App. pp. 270, 276.

⁷ JackHanksPublicAdjuster, TikTok (Dec. 7, 2022), https://www.tiktok.com/@jackhankspublicadjuster/video/7174511659221044526?is_copy_url=1&is_from_webapp=1. See also Ex. 2, Moss Dec. at ¶9-10; App. pp. 269-70.

⁸ *Id.*

who work so hard behind the scenes to make us look so good and always bust our tails to get these claims handled *and appraisals won*” (emphasis added).⁹

22. This is not how a disinterested appraiser speaks. First, it is surprising that Hanks has developed a value for the Berkshire claim only a “few hours” after arriving for his multi-day inspection. Second, how a matter ended up in appraisal should be of no consequence to the appraiser. Third, the objective of appraisal is not to “get this thing over the top,” but instead to fairly determine the amount of loss. Finally, and most importantly, a disinterested appraiser does not refer to a result as being “for us.” All of these comments demonstrate that Hanks views his role in this appraisal process as an advocate for Berkshire and its counsel – to whom he refers as “us.”

23. Also curious is Hanks’ statement that this is a “pretty close to \$20 million dollar tornado claim.” Berkshire’s most recent estimate of damage for the Claim, presented on August 24, 2022, stated that the total cost to repair the alleged damage was \$12,453,045.99. It is unknown where this \$20 million figure comes from. It certainly could not be Hanks’ estimate, given that he had just arrived on-site a few hours earlier. Thus, it is clear that Hanks had a preconceived valuation of the claim even before completing his inspection.

24. So where did this preconceived valuation come from? Interestingly, in a Facebook post containing a picture of Hanks on the roof of the Berkshire property at the time of his inspection, Hanks states that he is “with **Zach Moseley and 5 others.**”¹⁰ Zach Moseley is counsel

⁹ JackHanksPublicAdjuster, TikTok (Dec. 23, 2022), https://www.tiktok.com/@jackhankspublicadjuster/video/7180379976976305454?is_copy_url=1&is_from_webapp=v1. See also Ex. 2, Moss Dec. at ¶9-10; App. pp. 269-70.

¹⁰ Jack Hanks, FACEBOOK.COM (Dec. 7, 2022, 2:28 PM), <https://www.facebook.com/jack.hanks1/videos/820555665919343>. See also Ex. 2, Moss Dec. at ¶ 6, 8; App. pp. 270, 273.

for Berkshire. It is improper for the insured's counsel to attend an inspection being conducted by its supposedly disinterested appraiser. This leads one to speculate whether the new \$20 million figure was presented to Hanks by Moseley. This would not be surprising given that when working for Moseley, Hanks states that "[w]e try, [w]e try" to "knock it out of the park," that he will "jam an appraisal down an insurance company's throat," that his "job is to get the insured paid," and that he will do this "for us."

25. Also curious is Hanks' claim that "Todd Stern wrote one hell of an engineering report." At no time was a report from Todd Stern ever produced during the adjustment process. Thus, it appears that only three hours after first arriving at the Berkshire property for a three-day inspection, Hanks had already concluded that a report obtained from counsel for Berkshire (but never produced to Federal during the adjustment process) was accurate and "one hell of" a report.

26. All of the foregoing establishes that Hanks is not a disinterested appraiser. He is incapable of stepping out of his advocate role for policyholders when assuming the role of a disinterested appraiser. This appears to especially be the case when Hanks is working for the attorneys at MMA, for whom he is frequently employed. Hanks candidly states that when working for MMA, his job is to "get the insured paid." This is not the role of an appraiser. Accordingly, Hanks is not a disinterested appraiser and should be removed from his role as Berkshire's appraiser in this matter.

IV. AUTHORITIES

27. Berkshire's policy explicitly requires that it name a "competent and disinterested appraiser." Plaintiff's designation of Hanks as its appraiser violates this requirement. "Disinterested" is synonymous with impartial, unprejudiced, or "neutral." *Dictionary.com Unabridged*, Random House, Inc. (December 19, 2022, 8:30 AM),

<http://www.dictionary.com/browse/disinterested>. It is also synonymous with *fair*. *Id.* at (December 19, 2022, 8:40 AM), <http://www.dictionary.com/browse/fair>.

28. The Texas Supreme Court has held that “the purpose of the appraisal clause is to secure a fair and impartial tribunal to settle the differences submitted to them. In their selection, it is not contemplated that they shall represent either party to the controversy or be a partisan in the cause of either, nor is an appraiser expected to sustain the views or to further the interest of the party who named him. And this is true, not only with respect to estimating the amount of the loss, but also with reference to the selection of an umpire. They are to act in a quasi-judicial capacity “free from all partiality and bias in favor of either party, so as to do equal justice between them.” *Delaware Underwriters v. Brock*, 211 S.W. 779, 780 (Tex. 1919).

29. The Northern District of Texas has recognized that a “disinterested or independent appraiser is one ‘not only without pecuniary interest, but impartial, fair, open-minded, and without partisanship, prejudice, or bias.’” *Devonshire Real Estate & Asset Management, LP v. American Ins. Co.*, No. 3:12-CV-2199-B, 2013 WL 12124310 at *1 (N.D. Tex. May 30, 2013) (citing *Holt v. State Farm Lloyds*, No. 3:98-CV-1076-R, 1999 WL 261923, at *10 (N.D. Tex. Apr. 21, 1999)).

30. Hanks meets none of these standards. His Facebook posts, podcasts, and Tiktok videos all plainly demonstrate that he is not impartial, not fair, not open-minded, and not without partisanship, prejudice, or bias. To the contrary, he views his role as an appraiser to be exactly the same as his role as a public adjuster – to win, for Berkshire and, in this case, his friends working for Berkshire’s counsel.

31. As the Texas Supreme Court stated over a century ago, appraisers must “act in a quasi-judicial capacity . . . free from all partiality and bias in favor of either party, so as to do equal justice between them.” *Delaware Underwriters*, 211 S.W. at 780. Contrary to these lofty

standards, Hanks is a self-admitted partisan. There is nothing judicial whatsoever regarding Hanks' views on the appraisal process. His "knock it out of the park" attitude is not free from partiality and demonstrates clear bias in favor of Berkshire and its counsel. Allowing Hanks to serve as Berkshire's appraiser fails to do equal justice between the parties.

32. The United States District Court for the Western District of Kentucky recently discussed the situation where a public adjuster attempted to serve as a disinterested appraiser. In *Travelers Cas. Ins. Co. v. Mudd's Furniture Showrooms, Inc.*, the plaintiff insured hired a public adjuster to serve as its appraiser. No. 4:19-CV-186-JHM, 2022 WL 949928 at *2 (W.D. KY Mar. 29, 2022). After the appraisal panel entered an award, the carrier defendant moved to have the award vacated, citing clear bias by the insured's appraiser. The court noted:

Other facts in the record call into question [the insured's appraiser's] impartiality as well. [The insured's appraiser] is not one who occasionally acts as an appraiser in an insurance dispute. Acting as an appraiser is now his principal business. For years he worked for insurers but he now has "started representing policyholders." His firm no longer does much public adjusting. Instead, once it finds a good opportunity, it utilizes the appraisal provisions in insurance policies because it is "a better process to resolve these claim disputes." In fact, even though he acknowledges that it is the policyholder who must invoke the appraisal process, his firm actually sends the letter to the insurance company because "it's just easier if I do it." **His business is to help policyholders when his focus as an appraiser should be to fairly and impartially value a loss.**

* * *

The [insured's appraiser's company] uses the appraisal process as a tool to help policyholders, which in the Court's opinion is not how the process should work. Perhaps this way of thinking is naïve on the Court's part and does not reflect the practicalities of the real world, but it just seems wrong for an appraiser to start out with a preconceived notion that it can, or should, add value to a claim.

Id. at *6-7. (emphasis added.)

33. The Western District of Kentucky held that no reasonable jury could conclude that the appraiser in that case was impartial. Accordingly, the court vacated the challenged appraisal award. In ordering such, the court noted that if the public adjuster appraiser wished to "add value

to the claim . . . get involved as an adjuster, not as an appraiser, if it is your desire to help the policyholder. Again, an appraiser must not show bias or favoritism to any party or do the partisan bidding of one side.” *Id.* at *7.

34. As a public adjuster, Hanks’ role is to advocate on behalf of his policyholder clients. To serve as a disinterested appraiser, however, Hanks must be able to approach the appraisal process with no bias favoring the policyholder. As shown above, Hanks cannot disassociate himself from his profession as a public adjuster. Even when acting as an appraiser, Hanks continues to believe that his role is to augment the amount of the award – an approach that is inconsistent with the standards of impartiality established under Texas law.

35. The *Mudd’s Furniture* holding from the Western District of Kentucky is consistent with Texas law as it relates to challenged appraisers. In *Holt*, the Northern District of Texas addressed an insured’s claim that a carrier had appointed an appraiser who was not independent. 1999 WL 261923, at *3. In that matter, the insured accused the carrier of retaining an appraiser who was not independent due to his prior routine work for the carrier as an appraiser. *Id.* at *4. The Northern District of Texas determined that this evidence alone was sufficient to create a genuine issue of material fact with respect to the appraiser’s partiality for a jury to decide. Other factors that Texas courts consider when determining the impartiality of an appraiser include whether the insured or its counsel influenced or exercised control over the appraiser. *Devonshire*, 2013 WL 12124310, at *2.

36. Hanks is not a disinterested appraiser as is required by the Policy. Instead, Hanks’ social media postings plainly demonstrate that he views himself as an advocate for both Berkshire and its counsel. He openly admits that as their preferred appraiser he will “try...try” to “knock it out of the park”, will “jam [the] appraisal down [the] insurance company’s throat”, will “get the

insured paid”, will “get this thing over the top”, and will do all of these things “for us.” These are not the words of an appraiser who, as required by Texas Supreme Court precedent, will “act in a quasi-judicial capacity . . . free from all partiality and bias in favor of either party, so as to do equal justice between them.”

37. Hanks’ role as an appraiser meets all of the touchstones necessary for this Court to disqualify him from serving as Berkshire’s appraiser, including Hanks’s view that he can “win” the appraisal for “us,” as well as Berkshire’s counsel apparent influence over Hanks through their repeated work together both professionally and socially. Because no reasonable jury could conclude that Hanks is disinterested, Federal respectfully asks the court to issue an order disqualifying Hanks from serving as an appraiser.

V. CONCLUSION AND PRAYER

Federal prays that its Motion to Disqualify Jack Hanks as Plaintiff’s Appraiser be granted in its entirety, that this Court enter an order disqualifying Jack Hanks as Berkshire’s appraiser, and that Federal be granted any further relief to which it may be entitled.

Respectfully submitted,

By: /s/ Eric K. Bowers

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CERTIFICATE OF CONFERENCE

I certify that I communicated by phone with Derek L. Fadner on January 3, 2023 regarding the substance of this Motion. Mr. Fadner advised that Plaintiff Dallas Berkshire is opposed to the Motion and the relief requested.

/s/ Bennett A. Moss
Bennett A. Moss

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing has been served on the following counsel of record in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on January 5, 2023:

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